U.S. DEPARTMENT OF COMMERCE
Office of Inspector General

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

NIST'S MANAGEMENT OF INTERAGENCY AGREEMENTS

Final Report No. STD-14439-4-0001/September 2004

PUBLIC RELEASE

Office of Audits, Business & Science Division

UNITED STATES DEPARTMENT OF COMMERCE
The Inspector General
Washington, D.C. 20230

SEP 30 2004

MEMORANDUM FOR: Dr. Hratch Semerjian, Acting Director
National Institute of Standards and Technology

FROM: Johnnie E. Frazier

SUBJECT: *NIST's Management of Interagency Agreements*
Final Report No. STD-14439-4-0001

This is a report on our survey work evaluating the National Institute of Standards and Technology's (NIST's) management of interagency agreements. We undertook this review because almost a quarter of NIST's funding comes from payments for services provided to other government entities and our earlier concerns and observations regarding how Commerce and many of its of its bureaus handle such agreements. Federal agencies' management of interagency agreements and other intragovernmental transactions has been historically problematic, prompting the Government Accountability Office (GAO) to classify accounting for such transactions as material weaknesses in its FY 2001 and FY 2002 Financial Report of the United States Government.

We originally sought to determine whether NIST was properly recovering and recording costs for its reimbursable work for other agencies. However, we modified our purpose in response to two events that occurred during the course of our review: (1) the Department provided new draft guidance to address known problems with reimbursable agreements that we believe addresses many of the concerns that prompted our audit; and (2) NIST completed its own internal review of its interagency agreement process, which made recommendations for resolving some issues that were similar to ones we were identifying in our review. As a result, we decided to summarize the work we had completed on this assignment for management's use in implementing corrective actions. While we are not issuing any formal recommendations at this time, some of the concerns we identified were significant and, if not already addressed, require immediate attention.

NIST laboratories conduct research and develop measurement techniques, reference data, test methods, and standards. NIST laboratories provide these unique measurement techniques, standards, and technical advice to other agencies. According to NIST's budget office, the activities that NIST provides are a major source of funding. For example, in FY 2002, NIST laboratories[1] received $405.5 million in federal government

[1]Building and Fire Research Laboratory; Chemical Science and Technology Laboratory; Electronics and Electrical Engineering Laboratory; Information Technology Laboratory; Manufacturing Engineering Laboratory; Materials Science and Engineering Laboratory; Physics Laboratory

funding, $103.9 for work performed for other federal agencies and the balance from direct appropriations.[2]

NIST's enabling legislation, specifically 15 USC 275b, requires the recovery of costs for any service provided to another government entity. The NIST Administrative Manual provides additional details regarding the recovery of costs. According to the manual, care should be taken in the development of estimates to ensure that all appropriate costs are included. For example, when work is performed under the authority of NIST's enabling legislation, all costs of the services provided, including overhead or indirect charges, should be included in the estimate. The manual also explains that the NIST director may allow the unit sponsoring the agreement to waive some or all of the overhead costs it would otherwise charge the customer agency if the director determines that the interest of the Government would be best served by waiving the charge. However, all waived charges, regardless of amount, must be accounted for by transferring the cost to a NIST appropriation-funded cost center.

Our review focused on the agreements at the Physics Laboratory active in fiscal year 2002, but some of the issues we found there prompted us to conduct a more general review of the process at the other six laboratories. We selected 30 interagency agreements from all seven of the laboratories from an estimated total of 300. NIST could not provide us with a complete and accurate inventory of active fiscal year 2002 agreements.

We found it difficult to assess whether NIST was recovering full costs because it was not properly recording and tracking program and cost data pertaining to these agreements. For example,

- Laboratories did not always establish project or task codes to record all expenses for each project.
- NIST's legacy financial system could not provide information on the total amount collected or spent for individual agreements.

We also had difficulty obtaining comprehensive records that included proposals and statements of work. In the absence of information on work required, work performed, and the total amount spent, external reviewers and NIST managers cannot assess whether full costs are being recovered. As such, NIST may be improperly using its appropriation to conduct work for other agencies, and thereby limiting the funding it has to conduct its own work. For example, in at least eight of the agreements that did have detailed proposals or statements of work, we found evidence indicating that NIST either agreed to accept less than full cost or was not recovering full cost for some other reason. In either case, we did not find evidence of the required waiver.

We found other problems with the way the agreements were reviewed. For example, NIST's Administrative Manual requires the Chief of the Financial Policy Division to

[2] These amounts do not include funding from non-governmental entities.

approve interagency agreements after reviewing proposals, statements of work, and other key documents. The NIST manual also requires agreements to receive legal review when terms and conditions are questionable or other provisions regarding intellectual property rights or ownership occur. However, we found that many agreements had been approved without a statement of work and that none of the agreements we reviewed had evidence of legal review, even though some had questionable terms or special conditions, such as a lack of full cost recovery.

NIST's revised policies and procedures in conjunction with the Department's new guidance, should provide an appropriate basis for addressing the concerns we found during our review. Through discussions with your office, we are aware that NIST is already addressing the concerns we raised in this memorandum as part of its ongoing work to respond to issues surrounding its management of interagency agreements.

We appreciate the courtesies and cooperation your staff extended to us during our review. If you would like to discuss these matters further, please call me at (202) 482-3516 or William F. Bedwell, Jr., Acting Deputy Assistant Inspector General for Audits, on (202) 482-1934.

cc: Stephen Willett, Audit Liaison

[3] *Review of NIST Policies and Practices on Other Agency (OA) Funding*, Report of the O-Board, March 28, 2002
[4] *Improvements Are Needed in Commerce Agencies' Implementation and Oversight of Interagency and Other Special Agreements*, Final Inspection Report No. IPE-9460/September 2000